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RECENT DECISIONS

ATTORNEY AND CLIENT—EXPRESS AUTHORITY REQUIRED TO CONFESS JUDGMENT IMPAIRING CLIENT'S SUBSTANTIAL RIGHTS.—In an action to recover stipulated rent from tenant holding over, plaintiff's attorney without express authority consented to a judgment less in amount than assessed by verdict, in order to prevent the setting aside of the verdict as contrary to the evidence. At a later term of the court the plaintiff moved to set aside the judgment on the ground of lack of authority in attorney to confess judgment. *Held*, judgment set aside. *Bizzell v. Auto Tire and Equipment Co.* (N. C.), 108 S. E. 439 (1921).

By the weight of authority an attorney employed as such has, as an incident of such employment, the authority to confess judgment. *Denton Noyes*, 6 Johns (N. Y.) 296, 5 Am. Dec. 237 (1810); *Denny v. Brown*, Fed. Cas. 3805 (1844); *Teter v. Irvin*, 69 W. Va. 200, 71 S. E. 115, Ann. Cas. 1913A, 707 (1911). See also *Holbert v. Montgomery's Adm'rs.*, 5 Dana (Ky.) 11 (1837). This rule pertains in England. *Bradish v. Gee*, Amb. 229, 1 Ken. 73, 27 Eng. Rep. R. 152 (1754); *Mathews v. Munster*, L. R. 20 Q. B. D. 141, 27 L. J. Q. B. 49, 57 L. T. N. S. 922, 36 W. R. 178, 52 J. P. 260 (1887); Anonymous, 1 Salk. 88, 91 Eng. Rep. R. 82. Such confession of judgment is generally held binding on the client in absence of actual fraud or unfair dealing. *Bradish v. Gee*, *supra*; *Denton v. Noyes*, *supra*; *Meriden Arc-Light Co. v. Anderson*, 111 Ill. App. 449 (1903). The client has even been held bound even though the attorney confessed judgment in violation of instructions and knowing that the client had a good defense, no fraud appearing. *Thompson v. Pershing*, 86 Ind. 303 (1882).

As a modification of the majority rule rather than an adoption of the view of the minority, it has been held that such authorization is a mere presumption which may be rebutted, the record of the trial in such event constituting *prima facie* evidence of the authority. *Dobbins v. Dupree*, 39 Ga. 394 (1869); *Lowellville Coal Mining Co. v. Zappio*, 80 Ohio St. 458, 89 N. E. 97 (1909). A few cases allow judgments by confession by attorneys without authority to be set aside only when the attorney is insolvent, an action for damages against him in such a case being but an empty remedy. *Meriden Arc-Light Co. v. Anderson*, *supra*; *Anonymous*, *supra*. And likewise if the judgment prejudices the substantial rights of the client. *Bank of Glade Spring v. McEwen*, 160 N. C. 414, 76 S. E. 222, Ann. Cas. 1914C, 542 (1912).

By the minority view an attorney cannot confess judgment so as to bind his client unless he has express authority to do so. *Kilmer v. Gallaher*, 112 Iowa 583, 84 N. W. 697, 84 Am. St. Rep. 358 (1900); *Edwards v. Edwards*, 29 La. Ann. 597 (1877); *Grubbs v. Blum*, 62 Tex. 426 (1884); *Ward v. Price*, 25 N. J. Law, 225 (1855). This authority must in some cases affirmatively appear in writing. *Grubbs v. Blum*, *supra*.

Though this is apparently yet an open question in Virginia, it would seem by implication from the common law doctrine that the majority view is followed. *Colona v. Parksley Nat'l. Bk.*, 120 Va. 812, 92 S. E. 979, 983 (1917); *Alexander v. Alexander*, 85 Va. 353, 7 S. E. 335, 1 L. R. A. 125 (1888); *Valley Insurance Co. v. Barley*, 16 Gratt. 363 (1863).